

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

THE UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CIVIL ACTION NO.
)	
v.)	
)	
DRAVO CORPORATION,)	
)	
Defendant.)	

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency, files this Complaint and alleges as follows:

INTRODUCTION

1. This is a civil action brought pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9607(a). The United States seeks to recover response costs incurred and to be incurred by the United States as a result of releases or threatened releases of hazardous substances at or from the Hastings Naval Ammunition Depot Subsite (“Site”) of the Hastings Ground Water Contamination Site, located in Hastings, Adams County, Nebraska.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b), venue is proper in the District of Nebraska because the releases or threatened releases of hazardous substances that give rise to the claims occurred in this judicial district.

DEFENDANT

4. Defendant Dravo Corporation (“Dravo”) is a corporation incorporated in the Commonwealth of Pennsylvania. Defendant Dravo is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

THE SITE

5. The Hastings Ground Water Contamination Site consists of a contaminated aquifer and the contaminated soils which overlie the aquifer in Adams County in south-central Nebraska. The aquifer is the source of drinking water for the residents of Hastings.

6. The Hastings Ground Water Contamination Site was listed on the National Priorities List on June 10, 1986 (51 Fed. Reg. 21054 (1986)). See 40 C.F.R. Part 300, Appendix B. The National Priorities List is a national list of hazardous waste sites posing the greatest threat to health, welfare and the environment. The National Priorities List has been established pursuant to Section 105(a) of CERCLA, 42 U.S.C. § 9605(a).

7. Sampling by the State of Nebraska in the 1980s indicated that the Hastings Ground Water Contamination Site is contaminated with volatile organic compounds, including benzene, carbon tetrachloride, trichloroethylene (TCE), 1,1-dichloroethene (DCE), tetrachloroethene (PCE), 1,2-dichloroethane, and 1,1,1-trichloroethane (TCA). DCE is a breakdown product of TCE. TCE, TCA, PCE and DCE are all are hazardous substances, within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), pursuant to 40 C.F.R. § 302.4.

8. The Environmental Protection Agency (“EPA”) began taking soil gas and ground water samples at the Hastings site in 1985. Based on sampling results and information concerning historical practices, EPA identified six distinct sources of contamination within the Hastings city limits. EPA labeled each source with a subsite name. One of those subsites, the Blaine Naval Ammunitions Depot Subsite, is the subject of this Complaint (hereinafter referred to as the “Subsite”).

9. The Subsite includes soil and groundwater contamination in areas around the 48,000-acre depot, including at the Hastings East Industrial Park, located on the western portion of the site, near Hastings. Additionally, soil contamination surrounds a storm sewer that originates at the facility.

10. Each company that operated at the Subsite since 1968 used a vapor degreaser for cleaning equipment. The contamination of the Subsite results from discharges of solvent used for the degreasing of metals into drains and sewer lines. In particular, the contamination of the Subsite results from the improper disposal and spills of TCE and TCA used in a degreaser.

11. Pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, EPA conducted an investigation, the purposes of which were to identify the nature and extent of the contaminant source areas; define contamination of groundwater and soils; characterize Subsite hydrogeology; and determine the risk to human health and the environment posed by the Subsite.

12. EPA's remedial investigations began at the Subsite in 1987, focusing on groundwater and shallow soils. In 1990, an investigation of the vadose zone was initiated, including collection and analyses of soil, groundwater, and soil vapor samples.

13. In 1986, the U.S. Army of Engineers ("COE") began investigating and addressing contamination at the Subsite. Two of the operable units the COE addressed were those for contamination in the vadose zone and groundwater contamination, Operable Units 8 and 14, respectively. The COE has performed investigations and several removal actions in response to the contamination in the vadose zone, Operable Unit 8.

14. The COE is currently performing the remedial action for the ground water operable unit at the NAD Subsite, pursuant to an enforcement agreement between EPA, the Department of Defense and the state of Nebraska.

15. EPA has conducted oversight of the COE's response activities at the site, including work conducted on Operable Unit 8, and the feasibility study being conducted for the Operable Unit 14 groundwater cleanup. Implementation of the remedial action has not yet begun.

LAW GOVERNING CLAIMS FOR RELIEF UNDER SECTION 107 OF CERCLA

16. Section 104 of CERCLA, 42 U.S.C. § 9604, provides that whenever any hazardous substance is released into the environment, or there is a substantial threat of such a release into the environment, the President is authorized to act, consistent with the National Contingency Plan, to remove or arrange for the removal of such hazardous substance.

17. The President's authority under Sections 104(a) and (b) of CERCLA, 42 U.S.C. §§ 9604(a) and (b), as amended, has been delegated to the Administrator of EPA pursuant to Section 2(e) of Executive Order No. 12316, 46 Fed. Reg. 42,237 (August 14, 1981), reprinted in 42 U.S.C.A. § 9615 at 544-48. This authority was delegated to the Secretary of Defense for former military facilities under Executive Order No. 12580, (January 23, 1986) and further delegated to the Deputy Assistant Secretary of the Army, Environmental, Safety, and Occupational Health, and re-delegated to the Commander of the Army Corps of Engineers.

18. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section --

(1) the owner and operator of a vessel or a facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

* * *

shall be liable for --

(A) all costs of removal or remedial action incurred by the United States Government or a State . . . not inconsistent with the national contingency plan

19. Section 113(g)(2)(B) of CERCLA, 42 U.S.C. § 9613(g)(2)(B), provides:

In any such action described in this subsection [an action for recovery of costs under Section 107 of CERCLA], the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages.

**FACTS RELEVANT TO LIABILITY OF
THE DEFENDANT UNDER SECTION 107 OF CERCLA**

20. The vapor degreaser was installed at the facility in or about 1968 for use in cleaning metal parts. A solvent, TCE, was purchased by the facility from 1968 through 1971 and used in the degreaser. Another solvent, TCA, was purchased by the facility from 1971 through 1982 for use in the degreaser.

21. From 1968 through 1982, hazardous substances consisting of spent solvents from the vapor degreaser, including TCE and TCA, were disposed of into the storm drain and/or sanitary sewer system at the facility.

22. In 1967, a portion of the Subsite was purchased by Hastings Industries, Inc. (HII), after which HII owned and operated the facility. In December of 1968, Defendant Dravo acquired all of the stock of HII. In 1975, HII was dissolved and Dravo owned and operated the property and manufacturing operation facility directly until 1982.

GENERAL ALLEGATIONS

23. The Blaine Naval Ammunitions Depot Subsite is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

24. There are and were, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), releases and threatened releases of hazardous substances into the environment at and from the Subsite.

25. Hazardous substances, within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been treated, stored, or disposed of at the Subsite. Such hazardous substances have been found at the Subsite.

26. As a result of the releases or threatened releases at or from the Subsite, the United States has incurred “response” costs as defined in Sections 101(25) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(25) and 9607(a), for actions taken in response to the releases or threatened releases at or from the Subsite. The United States will continue to incur response costs in connection with the Subsite.

27. As a result of such response actions, the United States had incurred in excess of \$36 million in costs. The defendant has not reimbursed the United States for these response costs.

28. The response costs incurred by the United States in connection with the Subsite are not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

**CLAIM FOR RELIEF:
OWNER/OPERATOR CLAIM AGAINST DRAVO
UNDER SECTION 107(a)(2) OF CERCLA**

29. Paragraphs 1 through 28 are realleged and incorporated herein by reference.

30. Defendant Dravo owned and operated, and is the legal successor in interest to persons who owned and operated, a facility at the Subsite during the time of the disposal of hazardous substances at that facility.

31. Dravo is therefore jointly and severally liable, under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), for all costs incurred and to be incurred by the United States in response to releases of hazardous substances at the Subsite.

32. Dravo has not fully reimbursed the United States for the costs incurred in responding to the release of hazardous substances at the Subsite.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that the Court:

1. Enter judgment against the defendant for costs incurred by the United States in response to releases or threatened releases of hazardous substances at the Subsite;
2. Award the United States prejudgment interest on its response costs;
3. Enter a declaratory judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), for future response costs to be incurred by the United States in connection with the Subsite; and
4. Grant such other relief as the Court deems appropriate.

REQUEST FOR PLACE OF TRIAL

The United States of America hereby requests that trial of the above and foregoing action should be held in Omaha, Nebraska, and that the case be calendared accordingly.

Respectfully submitted,

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

s/ David F. Askman
DAVID F. ASKMAN, WY Bar #5-2683
Trial Attorney
Environment and Natural Resources Division
United States Department of Justice
999 18th Street, Suite 945NT
Denver, CO 80202
Telephone: (303) 312-7347

MICHAEL G. HEAVICAN
United States Attorney
District of Nebraska

By: s/ Laurie A. Kelly
LAURIE A. KELLY, MA Bar # 557575
Assistant United States Attorney
District of Nebraska
1620 Dodge Street, Suite 1400
Omaha, NE 68102-1506
Telephone: (402) 661-3700